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## ICC STAFF REBUTTAL TO MEC's "FACT SHEET" ON SB 2525

### Ex Parte Concerns

*Because of concerns over the restrictions and requirements imposed by the various statutes involving ex parte communications to which the agency as a whole is subject (see 5 ILCS 100/10-60; 5 ILCS 430/5-50; 220 ILCS 5/10-103; 83 Ill. Adm. Code 200.710), the Commissioners found it advisable not to take a position on the legislation while SB 2525 was under consideration by the General Assembly; at that time, Docket No. 03-0659 was pending before the ICC. Since the entry of an Order in Docket No. 03-0659, two related matters have commenced and are pending before the ICC. Therefore, the Commission continues to be subject to these same ex parte statutes. The Commission, without expressing either agreement or disagreement with its contents, does not object to circulation by Commission Staff of this position paper in which Staff articulates its concerns.*

### MEC Statement

ICC staff has said that SB 2525 would have a negative impact on competition within the state. NOT TRUE.

- It is the veto that is greatly harming competition. If the veto is not overridden, MidAmerican, one of the largest providers of competitive electric and gas services in the state, will be effectively forced out of the competitive gas market in Illinois. With gas market prices expected to exceed \$8 per MMBtu this winter, Illinois needs more gas competitors; not fewer.

### ICC STAFF REBUTTAL

**This paragraph mistakenly characterizes the operations of MEC as competition in its service territory. In fact, unlike other Illinois natural gas utilities, MEC has virtually no competitive sellers of natural gas in its service territory. MEC has, in its dominate position as the natural gas utility in its service territory, and as a result of its practice of making what it has called "competitive" sales of gas, almost completely eliminated other competitive natural gas sellers. The numbers of competitive natural gas sellers in MEC's service territory are significantly lower than in other gas utility service territories. In the absence of other competitive sellers of natural gas, there in fact is no competition in MEC's service territory which could work to the advantage of natural gas consumers.**

**In its filing on August 12, 2004, in a case dealing with this issue, an alternative gas supplier, Constellation NewEnergy ("NewEnergy Gas") stated: "As it stated in its**

**initial intervention in this proceeding, NewEnergy Gas stands ready and willing to provide service to the identified MidAm customers, under either long-term contracts to replace the MidAm contracts at issue, or on a short-term basis to allow the customers additional time to select a competitive supplier. NewEnergy Gas committed to provide this service effective June 1, 2004...and remains willing to serve MidAm customers effective September 1, 2004.”**

### **MEC Statement**

ICC staff has suggested MidAmerican can continue to serve competitive customers under an existing Illinois statute. STAFF’S ACTIONS ARE AT ODDS WITH ITS SUGGESTION.

- When MidAmerican attempted to continue service to Deere & Co, Moline Forge and Trinity Hospitals – customers that had chosen MidAmerican’s competitive service –under the statute cited by ICC staff, the ICC staff opposed MidAmerican’s continued service to these customers, forcing them to cancel MidAmerican’s lower-cost service and switch to more costly service.

### **ICC STAFF REBUTTAL**

**Commission Staff has told MEC that it is free to form an affiliate to sell natural gas in the competitive market, but that the law, and the Commission confirmed this in its order, does not permit an Illinois natural gas public utility to provide service to the public except under tariffed rates approved by the Commission. As for the customers which had been purchasing natural gas from MEC under its “competitive” service, those customers were required to take service from MEC because there were no other competitive providers from the market in its service territory.**

### **MEC Statement**

ICC staff has proposed that MidAmerican could create a new corporate affiliate to participate in the competitive gas market. STAFF’S PROPOSAL IS INEQUITABLE AND UNFAIR

- MidAmerican has been making competitive gas sales through a division of the utility without complaint for over ten years.
- No other competitor has been required to create a separate corporation, and forcing MidAmerican to do so would put it at a competitive disadvantage.

### **ICC STAFF REBUTTAL**

**MEC has contended, without logic and reason, that the rules which apply to other natural gas utilities in Illinois, that is, that making sales of natural gas at other than Commission-approved tariffed rates must be a business conducted only through a non-utility affiliate, should not apply to MEC: In fact, every natural gas utility in Illinois that desires to make “competitive” sales of natural gas at other than tariffed rates is prohibited from doing so by the Public Utility Act. Any of those utilities, however, could make such “competitive” sales through an affiliate. MEC, however, simply does not want to create an affiliate since it contends that it cannot profitably do so: the question must be asked about why forming an affiliate to make competitive sales cannot be profitable when MEC claims that its current “competitive” sales, done by the utility itself in violation of the law, are in fact profitable.**

**As far as the issue of having made “competitive” sales for over ten years without complaint is concerned, Commission Staff only learned of MEC’s practice within the last year and immediately advised MEC that the practice should stop. It is entirely understandable that no complaints would be received from customers taking advantage of MEC’s “competitive” sales when the economic advantages from those sales may have been subsidized by MEC’s tariffed customers.**

### **MEC Statement**

ICC staff has argued that SB 2525 would impact the state’s finances. NOT ACCURATE.

- MidAmerican’s competitive gas business will continue to pay the same taxes as other providers of competitive gas service. SB 2525 also doesn’t impact payments of the Public Utility Fund tax since that tax is not assessed on competitive commodity service in Illinois.
- The ICC should not require additional staff to administer SB 2525, since the regulatory requirements for competitive gas service are similar to those that already exist for competitive electric service.

### **ICC STAFF REBUTTAL**

**MEC’s first argument assumes that other competitive non-utility natural gas suppliers would replace MEC as the supplier for its formerly “competitive” customers, when the truth is, as MEC admits above, that those customers, since MEC ran nearly all competitive non-utility suppliers out of its service territory, found no competitive alternatives to MEC’s service and returned to MEC’s tariffed services at higher costs than the subsidized rates they had enjoyed as “competitive” customers.**

**As for the contention that granting MEC the right to engage in “competitive” sales will not take additional regulatory effort, MEC’s contention that Commission Staff capability is infinitely flexible and that regulatory supervision and oversight of a utility engaging in both tariffed and “competitive” sales is no additional work is completely fallacious.**

### **MEC Statement**

The ICC Staff argues that the ICC cannot do its job and protect consumers against cross-subsidization and discrimination. STAFF’S ARGUMENT IS NOT CREDIBLE.

- For nearly a century, the ICC has protected consumers from discrimination and cross-subsidization. There is no reason to believe the ICC is suddenly incapable of protecting consumers. SB 2525 includes new consumer protections. In fact, this legislation will impose more ICC regulation upon MidAmerican’s competitive gas business than any other gas competitor serving Illinois customers.

### **ICC STAFF REBUTTAL**

**The Commission has not been required in the past to attempt to protect tariffed customers from being negatively affected by “competitive” sales activities of utilities because the law has not permitted that activity in the past and, as the Commission has confirmed in its order in MEC’s case, does not permit that activity today. MEC’s claim about the level of regulation that will be imposed on MEC’s “competitive” gas operations is simply false and does not stand up to close scrutiny. In addition, the level of regulation being proposed by MEC is only superficial and, at the level**

proposed by MEC in its bill, is insufficient to protect tariffed customers from adverse economic consequences of MEC's "competitive operations.

**ICC STAFF RESPECTFULLY REQUESTS YOUR SUPPORT IN  
UPHOLDING THE GOVERNOR'S VETO OF SB 2525**